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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,976	02/17/2004	Stephen Donnell	18384.104	9095

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EXAMINER

NEWTON, JARED W

ART UNIT PAPER NUMBER

3634

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/779,976	Applicant(s) DONNELL ET AL.	
	Examiner Jared W. Newton	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 25-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 1-18 and 25-30 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 6, 2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,105,798 to Gruber et al.

In regard to claim 19, Gruber et al. disclose a rack 10 of shelves 14, said shelves comprising: a base member 34; a retaining member engageable with said base member, said retaining member (20,22,24,26) comprising a first wall 20 and a second wall 26, said walls having a plurality of corresponding notches 42 (see FIG. 5), and a pair of slots 42 formed therein, and a plurality of dividers 30 capable of being received in said notches and stored in said slots (see FIG. 2).

In regard to claim 20, Gruber et al. further show said first and second walls of the retaining member comprising a C-shaped slot 48 in communication with the storage slots 42 (see FIG. 4).

In regard to claim 21, Gruber et al. further show said base member 34 comprising a pair of hook supports at the distal ends 54A thereof (see FIG. 8).

In regard to claim 22, Gruber et al. further show said retaining member 22,24 comprising a plurality of connecting members 46 adapted to engage with the hook supports shown at the distal ends of the base member 34 (see FIG. 8).

In regard to claim 23, Gruber et al. disclose a shelf 14 capable of displaying merchandise, said shelf comprising means 46 for receiving a plurality of substantially linear, movable dividers 30, and means 46 for storing at least one of said dividers 30 (see FIG. 4).

In regard to claim 24, Gruber et al. further disclose a means for removing said dividers from said shelf 14 (see FIG. 4). The divider 30 is removed by squeezing the legs 54 together, and rotating said divider out of the C-shaped slot 48, and off of the comb 46 (see Column 4, Lines 8-26).

Claims 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,386,096 to Tiemann.

In regard to claim 23, Tiemann discloses a shelf 10 capable of displaying merchandise said shelf comprising means 15a,16a for receiving and storing a plurality of substantially linear, movable dividers 31a (see FIG. 1).

In regard to claim 24, Tiemann further discloses a means for removing said dividers 31a from said shelf 10 (see FIG. 1). The divider 31a is removed by disengaging said divider from the C-shaped portion of slot 15a, and raising the divider out of the slot.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,668,478 to Miller, Jr. et al. in view of US Patent No. 2,915,193 to Bromberg.

Miller Jr. et al. disclose a merchandise unit comprising:

- (Claim 19) A base member S (5) engageable with a retaining member 12, wherein said retaining member comprises spaced first and second walls (see FIG. 4);
- (Claim 21) Said base member S (5) comprising a pair of support hooks 34 (see FIG. 4);
- (Claim 22) Said retaining member 12 comprising a plurality of connecting members 16 adapted to engage the hook supports 34 (see FIG. 4).

Miller Jr. et al. does not disclose:

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- a. Said retaining member comprising a plurality of notches, a pair of slots, and a plurality of dividers adapted for disposal in corresponding notches and further adapted for storage within said slots (Claim 19);
- b. Said retaining member comprising C-shaped slots formed therein, said slots being in communication with corresponding storage slots (Claim 20);

With respect to a, Bromberg discloses a display shelf comprising: A retaining member comprising a first wall 13 and a second wall 20, said walls having a plurality of corresponding notches 19,28 formed therein and a pair of corresponding slots 19,28, and a plurality of dividers 32 capable of being received in said notches, and stored in said dividers (see FIG. 1).

With respect to b, Bromberg further discloses said slots comprising a C-shaped cross section (see FIG. 1).

The Miller Jr. et al., and Bromberg references are analogous art because they are from the same field of endeavor—merchandise support shelves. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the retaining shelf first and second walls and dividers as disclosed by Bromberg in place of the retaining shelf first and second walls as disclosed by Miller Jr. et al. The motivation would have been that as set forth by Bromberg—to provide the system with a simple means of subdividing a shelf into separate compartments or bins for the display and sale of different sized merchandise.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US Patent No. 3,110,402 to Mogulescu [Shows removable dividers]
- US Patent No. 5,269,447 to Gower et al. [Shows removable dividers]
- US Patent No. 6,419,099 to Weber [Shows a hooked base shelf and removable dividers]
- US Patent No. 5,845,794 to Highsmith [Shows removable dividers, and retaining and base members in a shelf system]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWN

January 3, 2006



RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER